

REPLY BRIEF			Docket No. AFF014USPT02
Serial No. 10/816,712	Filing Date 04/02/2004	Examiner Lindsey, Rodney M	Group Art Unit 3765
Applicant:	Dennis Piper		
Invention:	RETENTION SYSTEM FOR HEADGEAR		

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is filed in reply to the new grounds of rejection introduced in the Examiner's Answer mailed September 1, 2006.

REAL PARTY IN INTEREST

The real party in interest in connection with this appeal remains unchanged.

RELATED APPEALS AND INTERFERENCES

Appellant and appellant's legal representative remain unaware of any other appeal or interference which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

The status of the claims in this application remains unchanged.

STATUS OF AMENDMENTS

As set forth in the Appeal Brief, no amendment has been filed subsequent to final rejection of the appealed claims.

SUMMARY OF CLAIMED SUBJECT MATTER

A First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) and a retention element (217) and (218) cooperatively attached to the protective pad (215), with the retention element (217) and (218) embodying at least two separate and distinct circumferential lines of retention (111) and (112) intersecting at diametric points of intersection [(102) in Figure 1d and (223) in Figure 2a] when the headguard (200) is worn on the head (100). [Paragraphs (0136) - (0144) and Figures 1d and 2a].

A Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard (200) to be worn on a human head (100). The headguard (200) includes a protective pad (215) and a pair of separate and distinct retention elements (217) and (218) attached to the protective pad (215) and intersecting at diametric points of intersection (223). [Paragraphs (0136) - (0144) and Figure 2a].

A Third Embodiment of the Present Claimed Invention (claims 14-18) includes a front protective piece (315) and a rear protective piece (316) including a plurality of pads (340), (341), (342) and (343), (344), (345) capable of shifting relative to one another. [Paragraph (0148) and Figures 3a and 3b].

A Fourth Embodiment of the Present Claimed Invention (claim 20) includes a front piece (415) and a rear piece (416) pivotally attached to one another at diametrically opposed pivot points (452) whereby the pieces (415) and (416) may be independently pivoted about the pivot points (452). The front and rear pieces (415) and (416) are constructed to protect a wearer against physical injury from a blow to the head (100). [Paragraphs (0149) - (0150) and Figure 4].

ADDITIONAL NEW GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

7. The rejection of claims 2-4, 10 and 11 under 35 U.S.C. §103(a) as obvious over Mattes (054) (United States Patent No. 4,741,054) in view of Gwon (United States Patent No. 4,068,323).

ARGUMENT

Objections/Rejections Under 35 U.S.C. § 103

7.0 *The Examiner has rejected claims 2-4, 10 and 11 under 35 U.S.C. §103(a) as obvious over Mattes (054) in view of Gwon.*

SUMMARY OF CITED REFERENCE

Mattes (054) (United States Patent No. 4,741,054) discloses a chin cup for use with military headgear. Mattes (054) attaches the chin cup to the headgear with a pair of overlapping chin straps (20 and 26). Chin strap 20, as shown in FIG 1, does NOT form a circumferential line of retention as the headgear has an open crown. Furthermore, even in the event the chin straps were to form circumferential lines of retention the circumferential lines of retention would NOT diametrically intersect (*i.e.*, the points of intersection do NOT occur across the diameter of a circumferential line of retention).

Gwon (United States Patent No. 4,068,323) discloses a protective helmet to be worn on a human head. The helmet includes a protective pad and a pair of straps cooperatively attached to the back of the protective pad. The protective pad and straps embody two separate and distinct circumferential lines of retention which do NOT intersect when the helmet is worn on the head.

SUMMARY OF CLAIMED INVENTION

The First Embodiment of the Present Claimed Invention (claims 1-8) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a retention element cooperatively attached to the protective pad, with the retention element embodying at least two separate and distinct diametrically intersecting circumferential lines of retention when the headguard is worn on the head.

The Second Embodiment of the Present Claimed Invention (claims 9-13) is a protective headguard to be worn on a human head. The headguard includes a protective pad and a pair of separate and distinct diametrically intersecting retention elements attached to the protective pad.

LEGAL BASIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See*, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or

motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992). See, M.P.E.P. § 2143.01.

*A COMBINATION OF MATTES (054) AND GWON DOES NOT DISCLOSE
EACH AND EVERY ELEMENT OF THE CLAIMED INVENTION.*

The First Embodiment of the Present Claimed Invention includes at least two separate and distinct *diametrically intersecting* circumferential lines of retention when the headguard is worn on the head. These circumferential lines of retention are NOT imaginary lines or projections, but constitute a tangible feature on the headgear. Similarly, the Second Embodiment of the Present Claimed Invention includes a pair of separate and distinct *diametrically intersecting* retention elements attached to the protective pad.

The helmet of Mattes (054) is open across the top of the helmet and therefore cannot and does NOT define two circumferential lines of retention. Furthermore, even in the event the chin straps were somehow construed to form circumferential lines of retention despite the gap created by the open top, those circumferential lines of retention intersect at the right and left sides of the chin, a far cry of the diametric intersection of the Present Claimed Invention.

The helmet of Gwon comes closer to the Present Claimed Invention as it includes two separate and distinct circumferential lines of retention, but these lines of retention do NOT intersect at all when the helmet is worn on the head.

Constructing the chin straps on the helmet disclosed in Mattes (054) (i.e., straps 20 and 26) from an elastic material as suggested by Gwon simply does NOT reconfigure the helmet of Mattes (054) into a helmet having *diametrically intersecting* circumferential lines of retention. Withdrawal of this rejection is respectfully requested.

CONCLUSION

Applicant respectfully submits that all pending claims (claims 1-18 and 20) are in condition for allowance.

Respectfully submitted,

Date

06 Oct 06

By



Michael S. Sherrill, #32,302
SHERRILL LAW OFFICES, PLLC
4756 Banning Avenue, Suite 212
White Bear Lake, Minnesota 55110-3205
(651) 426-2400